10

# SUPREME COURT OF THE UNITED STATES.

## No. 419.

JAMES BRADLEY, PLAINTIFF IN ERROR,

vs.

R. S. HUNT AND CAROLINE RHINES, ADMINISTRATORS OF A. S. RHINES, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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1 Among the rolls, records, and judicial proceedings of the Circuit Court of the United States for the western district of Pennsylvania, in the third circuit, may be found the following words and figures, viz:

JAMES BRADLEY, a citizen of the State of Kentucky,
*vs.*
R. S. HUNT and CAROLINE RHINES, administrators of A. S. Rhines, dec'd, citizens of the State of Pennsylvania. } No. 115. November term, 1866.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of August, A. D. 1866, comes the plaintiffs, by their attorneys, and file the following præcipe and declaration.

2 In the Circuit Court of the United States for the western district of Pennsylvania.

*Copy of præcipe.*

JAMES BRADLEY, a citizen of the State of Kentucky, assignee of Breeden & Co.,
*vs.*
R. S. HUNT and CAROLINE RHINES, citizens of the State of Pennsylvania, administrators of the estate of Andrew S. Rhines, deceased.

Issue summons; case returnable to the first Monday of October next.

B. F. & A. G. LUCAS,
*Att'ys for Pl'ffs.*

To H. SPROUL, *Clerk.*

Whereupon the following summons were issued:

*Copy of Summons.*

3 UNITED STATES, *Western District of Pennsylvania, sct:*

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you, that you summon R. S. Hunt and Caroline Rhines, administrators of A. S. Rhines, citizens of the State of Pennsylvania, late of your district, if they may be found therein, so that they be and appear before the judges of the Circuit Court of the Unted States, in and for the western district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at Pittsburgh, on the first Monday of October next, to answer to James

Bradley, a citizen of the State of Kentucky, in an action on the case, and have you then there this writ.

Witness the Honorable Salmon P. Chase, esquire, Chief Justice of the Supreme of the United States, at Pittsburgh, this 30th day of August, A. D. 1860, and in the 91st year of the independence of the said United States.

[SEAL.] H. SPROUL, *Cler.*

[50 ct. stamp.]

4 Upon this writ was the following endorsement:

*Endorsement upon writ.*

Oct. 15, 1866. Served the within summons on R. S. Hunt, by copy left at his residence with his wife. Oct. 16th, 1066. Served on Caroline Rhines, personally, by copy handed her. So answers M. W. Reitz, sh'ff of Jeff. co.

JEFFERSON COUNTY, *ss*:

Before me, the subscriber, personally came M. W. Reitz, high sheriff of Jefferson county, Pa., who being duly sworn according to law, says: That he served the within summons on R. S. Hunt, by leaving copy thereof at his residence with his wife, on the 15th day of Oct., 1866, and on Caroline Rhines, personally, by copy handed her on the 16th day of October, A. D. 1866.

M. W. REITZ, *Sheriff.*

Sworn and subscribed before me this 16th day of Oct., A. D. 1866.

H. BUM, *Pro.*

5 And also, upon the same day comes plaintiff's attorneys and files the following declaration.

*Copy of Declaration.*

UNITED STATES OF AMERICA, *Western District of Penna., ss:*

R. S. Hunt and Caroline Rhines, citizens of the State of Pennsylvania, administrators of all and singular the goods and chattels, rights and credits, which were of Andrew S. Rhines, late of Jefferson county, in said district, deceased, who died intestate, were summoned to answer James Bradley, a citizen of the State of Kentucky, assignee of the firm of Breeden & Co., of a plea of trespass on the case upon premises. And thereupon, the said James Bradley, by B. F. & A. G. Sucas, his att'ys, complains: For that whereas, the said Andrew S. Rhines, in his life-time, to wit, on the tenth day of July, in the year of our Lord one thousand eight hundred sixty-three, at the district aforesaid, together with one Hiram Carman, did enter into a certain contract in writing with the said Breeden & Co., of the tenor following, that is to say:

"Memorandum of an agreement made and concluded this 10th day of July, A. D. one thousand eight hundred and sixty-three, between Breeden & Co., of Portland, Elk Co., Pennsylvania, of the one
6 part, and Andrew S. Rhines, of Lake City, Elk Co., Pennsylvania, and Hiram Carman, of Portland, Elk Co., Pennsylvania, of the other part, witnesseth: That the said Breeden & Co. agree to let or lease to said Andrew S. Rhines and Hiram Carman their steam saw-mills and appurtenances, situated at Portland, Elk Co., Pennsylvania; also the farm connected therewith, with all the buildings upon said farm; also certain tracts, or warrants, of timber lands belonging to said Breeden & Co., as follows: warrant No. 5,802, warrant No. 5,795, warrant No. 4,262, and warrant No. 4,267, for the term ending July 1st, eighteen hundred and [and] sixty-four (1864.) Said Andrew S. Rhines and Hiram Carman agree to cut, manufacture, and deliver in the market of Pittsburgh, Cincinnati, or Louisville, from the tracts of land above named, fifteen hundred thousand feet (1,500,000) of merchantable white pine boards, or as much more as they can reasonably so deliver. Also one hundred thousand, or one hundred and fifty thousand cubic feet of good and merchantable white pine square timber. The boards are to be well manufactured; and as to the thickness, they are to be sawed according to the directions of J. N. Breeden. They are to be sawed by same rule of thick-
7 ness as per contract heretofore with Bunker & Carman. Said J. N. Breeden is also to determine and advise, before the boards leave the mouth of the Clarion river, which of the above-mentioned markets the boards are to be delivered at. The boards to be delivered in the rafts or fleet in the water.

In consideration whereof, said Breeden & Co. agree to pay said Andrew Shines and Hiram Carman the sum of nine dollars per thousand feet, for each and every thousand feet of boards so delivered. It is understood by the parties that if the boards are to be stopped at Pittsburgh market, then the sum of fifty cents per thousand feet is to be deducted from the above amount. The payment to be made monthly, according to estimates furnished by said Rhines & Carman, as follows: four dollars and fifty cents per thousand feet for the boards as fast as they are manufactured and piled on the bank of the river, and two dollars and fifty cents per thousand ft. at the time of rafting and running; the balance to be paid within thirty or sixty days from the time the boards are delivered. The market measurement to be the measure to settle by.

Also, said Andrew S. Rhines and Hiram Carman are to
8 have an interest in the square timber aforementioned, for taking out and running the same, amounting to the sum of (5½ five and one half cents per cubic foot, and then the parties are to sell the timber as their joint property; and the proceeds arising from such sale, after deducting the five and one half cents per ft. belonging to said Rhines & Carman, is to be equally divided between the parties to this lease. Said Rhines & Carman are to take care of the timber at their expense, to any reasonable length of time, after the timber is in the market for marketing the same. It is understood that the parties pay equally the expense of measuring the timber.

Said Rhines & Carman are to take good care of the property and premises leased to them, to the best of their ability, and return the mill and premises at the expiration of the term in good repair, unavoidable accidents and natural ware and tare excepted, &c., as by reference had thereto will more fully and at large appear; which said article of agreement, after the making thereof, to wit, on the eighth day of April, in the year of our Lord one thousand eight hundred and sixty-four, was assigned by said Breden & Co. to the said James Bradley.

9 And whereas, also, after the making of the said contract between the said Breden & Co., and the said Andrew S. Rhines and Hiram Carman, and after the assignment thereof by the said Breden & Co. to the said James Bradley, to wit, on the day of , in the year of our Lord one thousand eight hundred and sixty-five, at the district aforesaid, the said Andrew S. Rhines died, and letters of administration were, in due course of law, granted to said R. S. Hunt and Caroline Rhines; and although the said plaintiff, from time to time, and at all times since the making of said articles of agreement, hath well and truly performed and fulfilled all the undertakings and agreements in said article mentioned by him to be performed and fulfilled; and although the said plaintiff did pay to the said Andrew S. Rhines in his lifetime, and to the said Hiram Carman, the sum of nine dollars per thousand feet for each and every thousand feet of boards delivered by them; and although the said plaintiff was, at all times, ready and willing to pay to them, the said Andrew S. Rhines and Hiram Carman, the sum of nine dollars per thousand feet for each and every thousand feet of boards which they should deliver of the quantity of boards and

10 lumber in the said articles of agreement specified, yet the said plaintiff, in fact, saith, that the said Andrew S. Rhines, in his lifetime, and the said R. S. Hunt and Caroline Rhines, administrators as aforesaid, after the death of the said Andrew S. Rhines, not regarding the said contract so as aforesaid made by him, but contriving, and wrongfully and unjustly intending to injure the said plaintiff, did not, nor would perform the said agreement, nor his promise and undertaking but thereby craftily and subtlty deceived the said plaintiff in this, to wit, that the said Andrew S. Rhines wholly omitted and neglected to do and perform certain things which were requisite and necessary to be done and peformed under and by virtue of the said agreement, and according to the tenor and effect, and the true intent and meaning thereof; that is to say, they, the said Andrew S. Rhines and Hiram Carman, did not cut, manufacture, and deliver in the markets of Pittsburgh, Cincinnati, or Louisville, fifteen hundred thousand feet of merchantable white pine boards; and they, the said Andrew S. Rhines and Hiram Carman, did

11 not deliver one hundred thousand cubic feet of good and merchantable white pine square timber; nor did any person or persons at any time deliver such timber and boards for them, or either of them.

And the said plaintiff, further in fact, saith that afterwards, to wit,

on the fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, at the district aforesaid, the said Andrew S. Rhines sold and disposed of a large quantity, to wit, five hundred thousand feet of the boards, manufactured under and in pursuance of the terms of said article of agreement, and the said Andrew S. Rhines also sold and disposed of a large quantity, to wit, one hundred thousand cubic feet of white pine square timber, cut and manufactured under and in pursuance of the terms of the said articles of agreement, and converted and applied the proceeds of the same to his own use; and the said plaintiff, in fact, further saith that neither the said Andrew S. Rhines in his lifetime, nor the said R. S. Hunt and Caroline Rhines, administrators as aforesaid, since his death, has or have paid the same, or any portion of the same to the said plaintiff, but to pay the same, or any part thereof to the
12 said plaintiff, the said Andrew S. Rhines, in his lifetime, wholly refused, and the said R. S. Hunt and Caroline Rhines, administrators as aforesaid, have ever since the death of the said Andrew S. Rhines, hitherto wholly refused, and still refuses so to do; wherefore, the said plaintiff saith he hath been injured, and hath sustained damage to the amount of fifteen thousand dollars, and therefore he brings his suit, &c.

And whereas also, the said Andrew S. Rhines in his lifetime, to to wit, on the day and year aforesaid, at the district aforesaid, was indebted to the said James Bradley, in the sum of fifteen thousand dollars, lawful money of the United States, for so much money by the said plaintiff before that time paid, laid out, and expended to and for the use of the said Andrew S. Rhines, at his special instance and request; and being so indebted to the said Andrew S. Rhines, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faitfully promised the said plaintiff to pay him the said last-mentioned sum of money, when he, the said Andrew S. Rhines, should be thereunto afterwards requested.

And whereas also, the said Andrew S. Rhines, in his lifetime, to wit, on the day and year last aforesaid, at the district afore-
13 said, was indebted to the said plaintiff in the further sum of fifteen thousand dollars, of like lawful money, for so much by the said Andrew S. Rhines before that time had and received to and for the use of the said plaintiff; and being so indebted he, the said Andrew S. Rhines, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said last-mentioned sum of money, when he, the said Andrew S. Rhines, should be thereunto afterwards requested, yet the said Andrew S. Rhines in his lifetime, and the R. S. Hunt and Caroline Rhines, administrators as aforesaid, after the death of the said Andrew S. Rhines, not regarding his, the said Andrew S. Rhines', several promises, and undertaking, so as aforesaid made, but contriving and wrongfully, and unjustly intending, craftily and subtly, to deceive the said plaintiff in this behalf, have not, nor has, or have either of

them as yet, paid either of said sums, (although often requested so to do,) but to pay the same, or any part thereof, to the said plaintiff, the said Andrew S. Rhines, in his lifetime wholly refused, and the said R. S. Hunt and Caroline Rhines, administrators as aforesaid, have, ever since the death of the said Andrew S. Rhines,
14 hitherto refused, and still refuse so to do; wherefore, the said James Bradley saith he is injured, and hath sustained damage to the amount of thirty thousand dollars, and therefore he brings his suit, &c.

B. F. & A. G. LUCAS,
*Att'ys for Pl'ff.*

And afterwards, to wit, March 13th, 1867, comes the plainfiffs, by their attorneys, B. F. & A. G. Lucas, and files the following præceipe for a rule to plead.

In the Circuit Court of the United States.

*Copy of precipe.*

JAMES BRADLEY, a citizen of the State of Kentucky,
*vs.*
R. S. HUNT, & CAROLINE RHINES, adm's of A. S. Rhines, dec'd, citizens of the State of Penn'a.
} No. 115. Nov. term, 1866.

Enter rule to plead in the above stated case in thirty days notice, or judgment sec. reg.
March 13th, 1867.

B. F. &. A: G. LUCAS,
*Att'ys for Pl'ffs.*

To H. SPROUL, Esq., *Clerk*.

15 Whereupon the following rule was issued.

In the Circuit Court of the United States for the western district of Pennsylvania.

*Copy of Rule.*

JAMES BRADLEY
*vs.*
R. S. HUNT & CAROLINE RHINES.
} No. 115. November term, 1866.

And now, to wit, March 14th, 1867, rule to plead in one month or judgment.
From the record.
[SEAL.]

H. SPROUL, *Clerk*.

Upon which is the following endorsement: Endorsement upon rule; rule served by copy, March 14th, 1867 H. D. Gamble.

And afterwards, to wit, March 22nd, comes the defendants, by their attorneys, Kirkpatrick & Mellon, and files the following plea:

16 In Circuit Court of U. S., western dist. Pa., Nov. term, 1866.

*Copy of Plea.*

JAMES BRADLEY
*vs.*
A. H. RHINES, adm'ts. } No. 115.

Plea

And the said defendants, by Kirkpatrick & Mellon, their attorneys, come and defend their wrong and injury, when, &c., and say that their said intestate, A. H. Rhines, did not undertake or promise, in manner and form as the said plaintiff hath above thereof complained against said def'ts, his administrators aforesaid; and of this the defendants put themselves on the country, &c.

22d March, 1867.

KIRKPATRICK & MELLON,
*Atty's for Def't.*

And the plaintiffs doth the like.

*Issue.*

17 And now, to wit, May 16th, 1867, the parties in this cause being at issue, a jury being called, came, viz: Joshua M. Snee, James McAllister, Thomas Neal, J. W. McKee, J. Mower, William Sheehy, William Kearns, John Siddons, Henry Earle, Esock Wheelock, Walter Kirkpatrick, and Joseph Kirkpatrick, twelve good and lawful men, who having been duly summoned, returned, balloted for, empannelled, and sworn, do say they find for the defendant.

And now, to wit, May 21st, 1867, judgment upon the verdict.

18 Whereupon, the defendants, by their attorneys, excepts to the judgment and decree of this court, and files the following bill of exceptions, and prays that a writ of error to the Supreme Court of the United States may be allowed.

In the Circuit Court of the United States for the western district of Pennsylvania, of November term, 1866, No. 115.

*Bill of exceptions.*

Be it remembered, that in the term of November, 1866, came James Bradey, a citizen of the State of Kentucky, assignee of Breden & Co., into the Circuit Court of the United States for the western district Pennsylvania, and impleaded Robert S. Hunt and Caroline Rhines, citizens of the State of Pennsylvania, administrators of all and singular the goods and chattels, rights and credits, which were of Andrew S. Rhines, late of the State of Pennsylvania, deceased, in a certain plea of trespass on the case, sur assumpsit, &c., in which the said James Bradley, deceased, (pro ut narr) and the said Robert S. Hunt,

and the said Caroline Rhines pleaded (pro ut pleas,) and there-
19 upon issues was joined between them.

And afterwards, to wit, at a session of the said court held at the city of Pittsburgh, before the honorable Wilson McCandless, judge of the said court, on the sixteenth day of May, eighteen hundred and sixty-seven, the aforesaid issue between the said parties came on to be tried by a jury of the said western district of Pennsylvania, for that purpose duly empannelled (pro ut list of jurors,) at which day came as well the said plaintiff, as the said defendant, by their respactive attorneys; and the jurors of the jury aforesaid empannelled to try the said issues, being also called, came, and were then and there in due manner chosen, and sworn or affirmed to try the said issues, and upon the trial the counsel of the said plaintiff to maintain the said issues on his part offered evidence as follows:

A lease from Breeden & Co. to A. S. Rhines and Hiram Carman, dated July 10, 1863, which said lease was in the words and figures following, that is to say. "Memorandum of an agreement made and concluded this 10th day of July, A. D. one thousand eight hundred and sixty-three, between Breeden & Co., of Portland Elk Co., Pennsylvania, of the one part and Andrew S. Rhines, of Lake City, Elk Co., Pennsylvania, and Hiram Carman, of Portland Elk Co.,
20 Pennsylvania, of the other part, witnesseth: That the said Breeden & Co. agreed to let, or lease, to the said Andrew S. Rhines and Hiram Barman their steam saw mills and appurtenances, situated at Portland, Elk Co., Pennsylvania; also the farm connected therewith, with all the buildings upon said farm; also certain tracts or warrants of timber lands belonging to said Breeden & Co., as follows: Warrant, No. 5,802, warrant, No. 5,795, warrant, No. 4,268, and warrant, No. 4,267, for the term ending July 1st, eighteen hundred and sixty-four (1864.)

"Said Andrew S. Rhines and Hiram Carman agree to cut, manufacture, and deliver in the markets of Pittsburgh, Cincinnati, or Louisville, from the tracts of land above named, fifteen hundred thousand feet (1,500,000) of merchantable white pine boards, or as much more as they reasonably can so deliver; also one hundred thousand, or one hundred and fifty thousand cubic feet of good and merchantable white pine square timber. The boards are to be well manfactured; and as to thickness, they are to be sawed according to the directions of J. N. Breeden; they are to be sawed by same rule of thickness as per contract hertefore with Bunker & Carman. Said J. N. Breeden is also to
21 determine and advise, before the boards leave the mouth of the Clarion river, which of the above mentioned markets the boards are to be delivered at. The boards to be delivered in the raft or fleet in the water. In consideration whereof, said Breeden & Co. agree to pay said Andrew S. Rhines and Hiram Carman the sum of nine dollars per thousand feet for each and every thousand feet of boards so delivered. It is understoood by the parties that if the boards are to be stopped at Pittsburgh market, then the sum of fifty cents per thousand feet is to be deducted from the above amount. The payment to be made monthly, according to estimates furnished

by said Rhines & Carman, as follows: Four dollars and fifty cents per thousand feet for the boards as fast as they are manufactured and piled on the bank of the river, and two dollars and fifty cents per thousand ft. at the time of rafting and running; the balance to be paid within thirty or sixty days from the time the boards are delivered. The market measurement to be the measure to settle by. Also, said Andrew S. Rhines and Hiram Carman are to have an interest in the square timber aforementioned, for taking out and running the same, amounting to the sum of (5½) five and one-half cents per cubic feet, and then the parties are to sell the timber as their joint property; and the proceeds arising from such sale, after
22 deducting the five and one-half cents per ft., belonging to said Rhines & Carman, is to equally divided between the parties to this lease. Said Rhines & Carman are to take care of the timber at their expense to any reasonable length of time after the timber is in the market for marketing the same. It is understood that the parties pay equally the expense of measuring the timber.

"Said Rhines and Carman are to take good care of the property and premises leased to them to the best of their ability, and return the mill and premises at the expiration of the term in good repair, unavoidable accidents and natural wear and tear excepted.

Witness our hands the day and year before mentioned."

(Signed) BREEDEN & CO.
A. S. RHINES.
HIRAM CARMAN.

Which said lease had been assigned by Breeden & Co. to the pl'ff on the 8th day of April, 1864. The execution of which said lease was then and there admitted by the counsel for the defendants, but the said counsel for the defendant, did then and there object to the to the admission of the said lease in evidence. First, because Hiram Carman, the surviving partner, alone can be sued according
23 to the instrument; and second, because that from the plaintiffs declaration it appears that the legal plaintiff is a citizen of the State of Pennsylvania, and therefore the court has no jurisdiction. And the court did then and there sustain the objections to the admission of the said lease in evidence, so made by the counsel for the defendants, and did then and there overrule the offer so made by the counsel for the plaintiff, upon both the grounds stated in the objection so made by the defendants counsel, and did then and there reject the evidence so offered by the plaintiffs counsel; to which decision and judgement of the court, the counsel for the plaintiff did then and there except, and request the court to seal this bill of exceptions, which is accordingly signed and sealed by the court and ordered to be made a part of the record in the said case.

[SEAL.] WILSON McCANDLESS,
*U. S. District Judge sitting at Circuit.*

UNITED STATES, *Western District of Pennsylvania, ss*:

24 The President of the United States to the Judges of the Circuit Court of the United States for the western district of Pennsylvania, greeting:

Because, that in the record and process, as also in the rendering of judgment, in a suit before you, or some of you, between James Bradley, a citizen of the State of Kentucky, plaintiff, and and R. S. Hunt, and Caroline Rhines, administrators of Andrew S. Rhines, deceased of the State of Pennsylvania, defendants in a plea of trespass on the case, a manifest error has intervened to the great damage of the said plaintiff, as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the

25 same before the Chief Justice and the Associate Justices of the Supreme Court of the United States on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Salmon P. Chase, esquire, Chief Justice of the Supreme Court, at Washington aforesaid, this 13th day of August, A. D. 1867, and of the independence of the United States, the 92nd.

[SEAL.] H. SPROUL, *Clerk*.
Per H. D. GAMBLE, *Deputy*.

We accept service of the within writ.
13 August, 1867.

KIRKPATRICK & MELLON,
*Atty's for Defendants.*

26 I, Henry Sproul, clerk of the Circuit Court of the United States in and for the western district of Pennsylvania, do hereby certify that the foregoing is a true, correct, and literal copy from the record and proceedings had in the case of James Bradley, a citizen of the State of Kentucky, against R. S. Hunt and Caroline Rhines, administrators of A. S. Rhines, dec'd, citizens of the State of Pennsylvania, at No. 115, of November term, 1866; that I have carefully examined and compared the same, and that it is a true, correct, and literal copy from the records of said Circuit Court.

In testimony whereof, witness my hand and the seal of said Circuit Court, at Pittsburgh, this 23d day of August, A. D. 1867.

[L. S.] H. SPROUL, *Clerk*,
Per H. D. GAMBLE, *Deputy Cl'k*.

[5 cent stamp.]
Fees $25.00 paid by Mr. Lucas.

H. SPROUL,
Per H. D. GAMBLE, *Dep'y*.

IN THE

# Supreme Court of the United States.

**JAMES BRADLEY**, a Citizen of the State of Kentucky, Assignee of Breeden & Co.

*vs.*

**R. S. HUNT** and **CAROLINE RHINES**, Citizens of the State of Pennsylvania, Administrators of the Estate of Andrew S. Rhines.

***Error to the Circuit Court of the United States, for the Western District of Pennsylvania.***

**PAPER BOOK OF PLAINTIFF IN ERROR.**

**B. F. & A. G. LUCAS,**
Attorneys for Plaintiff in Error.

IN THE

# Supreme Court of the United States.

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|---|---|
| JAMES BRADLEY, a citizen of the State of Kentucky, Assignee of Breeden & Co.<br>*versus*<br>R. S. HUNT and CAROLINE RHINES, citizens of the State of Pennsylvania, Administrators of the Estate of Andrew S. Rhines, deceased. | In Error to the Circuit Court of the United States, for the Western District of Pennsylvania. |

ABSTRACT OF THE CASE, AND BRIEF OF THE ARGUMENT AND AUTHORITIES FOR PLAINTIFF IN ERROR.

This was an action of *Assumpsit* brought in the Court below, by James Bradley, a citizen of the State of Kentucky, against R. S. Hunt and Caroline Rhines, citizens of the State of Pennsylvania, Administrators of the estate of Andrew S. Rhines, deceased, who had been, previous to, and was, at the time of his decease, also a citizen of the State of Pennsylvania.

Prior to, and on the tenth day of July, 1863, John N. Breeden, William Garnett and Alonzo J. Wilcox, composing the firm of Breeden & Co., were the owners of a large body of pine timbered lands, together with an extensive steam saw-mill.

This firm had previously been engaged in the business of manufacturing lumber from and upon these lands and mills.

These lands and mills were situated at a place called "Portland," in the County of Elk, and within the Western District of Pennsylvania.

The firm of Breeden & Co., on the tenth day of July, 1863, made a lease in writing, but not under seal, of the mills and four of the tracts of land, together with the farm, houses and other buildings connected with the farm and mills, to Andrew

S. Rhines and Hiram Carman, which lease was to continue for the term of one year from the first day of July, 1863.

A correct copy of this lease will be found in the Bill of Exceptions, which was tendered to, and sealed by the Court below.

The lessees failed to perform their part of the contract, in this, that they did not manufacture and deliver to the lessors the quantity of lumber which they were to manufacture and deliver by the terms of the lease, and in addition to this, Andrew S. Rhines, the Defendant's intestate, sold a portion of the square timber manufactured under the lease, and appropriated the entire proceeds thereof to his own use, not only without the assent, but against the remonstrance of Carman, his co-tenant.

On the seventh day of April, 1864, Breeden & Co. sold the entire body of lands, embracing the part which had been leased to Rhines and Carman, to James Bradley, the present Plaintiff, and on the eighth day of April, 1864, that Company assigned the lease with Rhines and Carman, to Mr. Bradley, thereby vesting in him all the rights which had theretofore subsisted in Breeden & Co.

Some time during the month of September, 1865, Andrew S. Rhines died, and Letters of Administration upon his estate were granted in due course to Robert S. Hunt and Caroline Rhines, the present Defendants.

This suit was brought on the 29th day of August, 1866, and on the 22d day of March, 1867, the Defendants pleaded the general issue, to wit: "that their said intestate, A. S. Rhines, did not undertake or promise in manner and form as the said Plaintiff had above thereof complained against the said Defendants, his Administrators aforesaid, and of this the Defendants put themselves on the country, &c."

To this plea the Plaintiff replied, and issue was thereupon joined.

This issue came on to be tried by a jury on the 16th day of May, 1867, when, to maintain the issue on his part, the Plaintiff offered in evidence the lease hereinbefore mentioned, (*pro ut* lease, set out in full in the Bill of Exceptions) together with the assignment thereon to the Plaintiff.

The execution of this lease was admitted by the Defendants' counsel, but the said counsel for the Defendants, objected to the admission of the said lease in evidence: First, because Hiram Carman, the surviving partner, alone can be sued, according to the instrument; and second, because that, from the Plaintiff's declaration, it appears that the legal Plaintiff is a citizen of the State of Pennsylvania, and therefore the Court has no jurisdiction.

The Court sustained the objection and rejected the evidence, upon both the grounds stated in the objection, to which ruling of the Court the Plaintiff's counsel excepted, and at their request, the Court sealed a Bill of Exceptions and ordered the same to be filed and made a part of the record in the cause.

This lease being, as it was, the very foundation of the Plaintiff's action, after its rejection by the Court below, Plaintiff offered no further evidence, and a verdict was thereupon rendered for the Defendants, upon which verdict a judgment was entered on the 21st day of May, 1867; whereupon this Writ of Error was sued out.

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## BRIEF OF THE ARGUMENT, AND AUTHORITIES.

The questions presented by this record are but two, namely:

1st. Can an action be maintained against the representatives of a deceased co-partner, co-obligor, co-promisor, or tenant in common; or is the remedy only against the survivor or survivors? and

2d. Had the Circuit Court jurisdiction in this case?

Of these questions in their order,

1st. The property which was the subject matter of the contract in this case was situated in the State of Pennsylvania, and the business to be carried on, under the contract, was to be carried on and conducted within the State of Pennsylvania.

It is to the law of Pennsylvania, therefore, that we are to look for the purpose of ascertaining the rights and liabilities of the parties to the contract. So far as these rights and liabilities are concerned, the law of Pennsylvania furnishes the rule of decision, as well in the Federal as in the State Courts.

It is made so expressly by the 34th Sec. of the Act of Congress of the 24th of September, 1789, known as the Judiciary Act, see Brightly's Dig. Laws of U. S., page 792.

The 34th Section of that Act provides that "The laws of the several States, except where the Constitution, Treaties, or Statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the Courts of the United States, in cases where they apply."

Is it said that this section of the Statute applies to such of the laws of the several States only as affect the construction of contracts, and not to such as affect the remedy."

To this we reply, that the Statutes of Limitations of the several States, affect, not the contracts, or their construction, but the remedy only.

Yet this Court has decided, in the case of McCluny *vs.* Silliman, 3 *Peters*, 277, that the Statutes of Limitations of the several States, where no special provision has been made by Congress, form a rule of decision in the Courts of the United States, and the same effect is given to them as is given in the State Courts.

The 34th Section of the Judiciary Act includes the Statutes of the several States which prescribe Rules of Evidence, in civil cases, as was determined by this Court in the case of McNiel *vs.* Holbrook, 12 *Peters*, 84.

And in Hinde and Wife *vs.* Vattier, 5 *Peters*, 397, it is ruled that "The rules of property and of evidence, whether derived from the laws or adjudications of the Judicial Tribunals of the States, furnish the guides and rules of decision in those of the Union, in all cases to which they apply, where the Constitution, Treaties, or Statutes of the United States do not otherwise provide."

In Massingill *vs.* Downs, 7 *Howard*, 767, it was ruled by this Court that "the settled construction of a State Statute by its Supreme Court, is considered as a part of the Statute."

To the same effect are the cases of Nesmith *vs.* Sheldon, 7 *Howard*, 812; Vanrenselaer *vs.* Kearney, 11 *Howard*, 297; Webster *vs.* Cooper, 14 *Howard*, 504; Green *vs.* James, 2 *Curtis, C. C. Rep.*, 189; Woolsey *vs.* Dodge, 6 *M'Lean*, 150, and Thompson *vs.* Phillips, *Baldwin*, 246.

It will not be pretended that either the Constitution of the United States or any Act of Congress has "required or provided" any other or different rule of decision upon this question than that provided by the law of Pennsylvania. Indeed the Congress of the United States would not have the power to legislate on this particular subject except in the Territories and Districts in which its legislative jurisdiction is exclusive.

Then if the States have not the power to alter the law on a question like the present, so as to constitute "a rule of decision" in the Courts of the United States, this absurdity would follow, that so far as the rule of decision in those Courts is concerned, there would be no power existing any where competent to change the law.

Having thus shown that the rights and liabilities of the parties are to be ascertained and determined by the law of Pennsylvania, we come now to the question, what does the law of Pennsylvania provide? and what are the liabilities of the Defendants under that law?

Prior to the year 1830, the law of Pennsylvania undoubtedly was as held by the Circuit Court. And so far was this doctrine carried, that even where a judgment had been recovered against two or more co-partners, co-obligors or promisors, and one of them died, the judgment creditor could follow the survivor only, and the estate of the decedent was wholly discharged from the payment of the judgment, or any part of it.

By the Act of April 6, 1830, this iniquity was partially remedied by a provision, that in case of the death of one of such joint debtors, after a joint judgment had been recovered, his estate, real and personal, should not be discharged, but the personal representatives were to be liable, as if the judgment had been several against the deceased alone.

There was also a provision that in cases of co-partners, co-obligors, promisors or contractors, where one of them died, no suit having been brought, or judgment recovered, the creditor might bring and maintain a suit for such joint debt against the representatives of the deceased partner, &c., after having driven the survivor or survivors to legal insolvency, or by alleging in his declaration, and proving at the trial, that the survivor was, in point of fact, insolvent. A joint action, however, could not be maintained against the survivor and the representatives of the deceased partner, for the reason that the judgments would be different, one being in *personam* and the other *de bonis*.

Thus the law stood until the passage of the Act of Assembly of April 11, 1848.

The Fourth Section of that Act provides, as follows:

"In any suit or suits which may hereafter be brought against the executors or administrators of a deceased co-partner, for a debt of the firm, it shall not be necessary to aver on the record, or prove on the trial, that the surviving partner or partners is or are insolvent, to enable the Plaintiff to recover." Purdon's Dig., Ed. of 1853, page 633; Title partnership.

This Act of Assembly has received a construction by the Supreme Court of Pennsylvania in various cases.

In the case of Miller *vs.* Reed, 3 *Casey*, 244, it was ruled that the Acts of Assembly of 6th April, 1830, and of 11th April, 1848, were intended to obliterate the common law distinctions in Pennsylvania, between instruments joint, and those joint and several, in the classes of cases provided for by those statutes; and that the terms of the legislation, though limited to undertakings that were joint and several, are applicable to contracts that are joint and not several.

In Brewster's Administratrix *vs.* Sterrett, 8 *Casey*, 115, it is ruled that the Act of 11th April, 1848, renders the deceased

partner's estate liable, whether the survivor be solvent or insolvent.

And in Moore's Appeal, 10 *Casey*, 411, it was determined that "the Act of 11th April, 1848, renders the estate of a deceased partner unconditionally liable for the partnership debts; and the creditors may demand payment on the distribution of his estate in the Orphans' Court, notwithstanding the recovery of a judgment at law against the surviving partner."

Many other authorities might be cited upon this point, but those already referred to abundantly prove our right to recover against the representatives of Andrew S. Rhines, without regard to the liability of Hiram Carman, the survivor.

Rhines and Carman were not partners, but tenants in common, but as the Acts of Assembly and the decisions made under them apply alike to all joint contractors, it is unnecessary to trace the difference that subsist in other respects, or which might be drawn between partners and tenants in common, in regard to the question now under consideration, in the absence of the Acts of Assembly and the cases adjudged under them.

2d. Had the Circuit Court jurisdiction in this case?

We think it had, for several reasons.

1st. Under the Judiciary Act of 1789, it is only in cases of the assignment of promissory notes or other *choses* in action that the assignees are prohibited from sueing in the United States Courts, unless their assignors were also qualified by the proper citizenship to sue in such Courts.

But neither in point of fact nor law, was this lease a *chose* in action.

A lease and the term created by it, so far as the tenants are concerned, constitute a *chattel real*, and so far as the landlord is concerned, they are but a part of his original estate in the premises leased.

Had a sum of money been due from the tenants, Rhines and Carman, to Breeden & Co., as rent. and if Breeden & Co. had continued to be the owners of the lands leased, and if they had simply assigned to Bradley the lease as the evidence of the debt due by Rhines and Carman, for such rent in arrears, together with the right to sue for and recover the rent, it would, under those circumstances, have been a case of an assignment of a *chose* in action merely.

But this case presents a very different question from the one suppposed.

Here Breeden & Co. were, at the time of the making of the lease, to wit, on the tenth day of July, 1863, the owners of the land in fee. They made the lease in question, which was to

continue in full force and operation for the term of one year from the first day of July, 1863.

That the instrument in question was a lease, is fully shown by the ruling in the case of Mitchell, *et. al. vs.* the Commonwealth, 1 *Wright*, 187.

The lease expired on the first day of July, 1864. The rent was to be paid in the price at which the lessors were to take the lumber and square timber manufactured by the tenants, as was decided in the case of Mitchell *vs.* the Commonwealth, just cited.

The lease contains no stipulation as to what specific quantities of lumber and timber were to be manufactured and delivered at specific periods during the term. They had the entire term within which to manufacture and deliver the lumber and timber agreed upon.

There could, therefore, be no rent said to be actually due until the very last day of the term, beyond that which arose from the lumber and timber which had been previously manufactured and delivered.

During the continuance of this lease, and almost three months before the expiration of the term, to wit: on the seventh day of April, 1864, Breeden & Co. sold and conveyed the whole of the leased premises to James Bradley, the present Plaintiff, in fee.

This conveyance carried with it the lease to Rhines and Carman, with all its benefits, without any formal assignment of the lease; and from the time of that conveyance, Rhines and Carman became the tenants of Bradley in as full and ample a manner as they had before been the tenants of Breeden & Co., and Bradley from that time was fully invested with all the rights of Breeden & Co., as well in the lease as of every other part of the estate conveyed. One of the rights which passed to and became vested in Mr. Bradley, by that conveyance, was the right to enforce payment of the rent, which had not been previously paid.

This is settled by numerous cases, but we will content ourselves with the citation of two of them, as they are leading cases upon the point, and, one of them especially, is exhaustive of the whole subject.

In the case of Johnston *vs.* Smith, 3 *Penna. Rep.*, 496, it is ruled that "no principle is better settled in the law, than that rent reserved upon a lease for a year or a term of years, which is the same thing, is incident to and accompanies the reversion, unless separated by an express reservation. Upon the death of the lessor, the reversion descends to his heirs, and they are entitled to demand and receive the rents which shall become payable afterwards."

In the Bank of Pennsylvania *vs.* Wise, 3 *Watts*, 394, it was ruled that "a purchaser at a Sheriff's sale of a lessor's title to real estate in the possession of a tenant, is entitled to the rent which becomes payable after the execution and acknowledgment of the deed."

The former of these cases was where the lessor had sold and conveyed the leased premises himself, while the latter was the case of a sale by the Sheriff upon legal process.

Nor does the fact that Breeden & Co. endorsed an assignment upon the lease itself on the eighth day of April, 1864, the day after the conveyance of the land, alter the question in the slightest degree. That assignment, upon its face, was made for the reason and upon the ground that Mr. Bradley had become the purchaser of the leased premises. The lease, however, had already passed by the conveyance of the reversion, independent of any formal assignment, and the assignment attempted to pass neither more nor less than what had already passed by operation of law.

To bring a case within the exception contained in the 11th Section of the Judiciary Act of the 24th September, 1789, the suit must not only be founded on a *chose* in action, but the *chose* in action must be assignable, and the Plaintiff must sue on *in virtue of the assignment*, Bullard *vs.* Bell, 1 *Mason*, 251, Wood *vs.* Dummer, 3 *Ibid*, 308.

Wherever the right passes by operation of law, the case does not fall within the exception contained in the 11th Section of the Judiciary Act. Hence it is, that an Executor or Administrator is not an assignee within the purview of the Act. Sere *vs.* Pitot, 6 *Cranch*, 336; Mayor *vs.* Foulkrod; 4 *Was. C. C. Rep.*, 349.

But Second. The objection to the Jurisdiction of the Circuit Court came too late. If there had really been any valid objection to the jurisdiction, it should have been taken, either by a plea in abatement, or by a motion to dismiss the suit for want of jurisdiction before a plea in bar.

The objection to jurisdiction upon the ground of citizenship, in actions at law, can only be made by a plea in abatement, as is decided by this Court in De Sobry *vs.* Nicholson, 3 *Wallace*, 420, and the cases therein cited.

The want of proper citizenship cannot be raised at the trial upon the merits. Smith, *et. al. vs.* Kernochen, 7 *Howard*, 216.

B. F. & A. G. LUCAS,
*Atty's. for Plaintiff in Error.*

# In the Supreme Court of the United States.

DECEMBER TERM, 1868.

JAMES BRADLEY, a citizen of the State of Kentucky, assignee of Breedin & Co.,

*vs.*

R. S. HUNT and CAROLINE RHINES, citizens of the State of Pennsylvania, administrators of the estate of Andrew S. Rhines.

No. 256.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

## BRIEF FOR DEFENDANTS IN ERROR.

### *Statement of Case.*

The facts of this case, and the questions in issue, are few and simple:

On the 10th of July, 1863, Breedin & Co., citizens of Pennsylvania, made a lease of certain land in Pennsylvania, for the term ending July 1, 1864, to Andrew S. Rhines and Hiram Carman, citizens of Pennsylvania, and partners in business, for a certain rent, payable in lumber.

Breedin & Co., on the 8th of April, 1864, before the expiration of the lease, assigned their interest in the lease to James

Bradley, a citizen of Kentucky, the plaintiff below, now plaintiff in error.

Andrew S. Rhines died in the year 1865, and letters of ad-administration on his estate were granted to the defendants below, now defendants in error.

Bradley, on the 29th of August, 1866, in his own name, as a citizen of Kentucky, and apparently in his own right, as assignee of the lease of Breedin & Co., sued the administrators of Andrew S. Rhines, one of the partners and joint lessees—(taking no notice of Hiram Carman, the surviving partner under the contract)—in the circuit court of the United States for the western district of Pennsylvania, in an action of assumpsit.

A declaration was filed setting forth all these facts and the lease under which the suit was brought; to which the defendants plead the general issue.

On the trial the lease was offered in evidence as the basis of the action; to which the defendants objected on two grounds—

1st. Because Hiram Carman, the surviving partner, alone can be sued according to the instrument; and

2d. Because, from the plaintiff's *declaration* it appears that the legal plaintiff is a citizen of the State of Pennsylvania, and therefore the court has no jurisdiction. (Printed Record, p. 9.)

The court sustained the objection on both grounds, rejected the evidence, and sealed the bill of exceptions, on which the present writ of error is brought.

*Argument for Defendants in Error.*

Two questions are argued by the counsel for the plaintiff in error:

I. The first question relates to *the form of the action as against the defendants;* to their *suability* in the circuit court of the United States for the western district of Pennsylvania, for this cause of action, under the laws of the United States and the practice of that court.

It is admitted by the counsel for the plaintiff in error that at common law, and under the laws of Congress, and of the State of Pennsylvania, prior to the passage by the latter of the act of April 11, 1848, the action could not be maintained in its present form. (Plaintiff in Error's Brief, p. 5.) But it is contended in effect, that under the provisions of that act it may be maintained, without any action on their part, because the practice in the courts of the United States is liable to be changed by the legislation of the several States from time to time.

This we deny, because there is a clear distinction made by the laws of Congress between "the *rules of decision* in trials at common law," and "*modes of proceeding* in suits at common law." In relation to the former, "the laws of the several States shall be regarded." (Act of Sept., 1789, sec. 34; 1 Brightly's Dig., U. S. Laws, p. 792.) But in regard to the latter, they were *fixed* by the act of May 8, 1792, sec. 2, "subject, however, to such alterations and additions as the said courts respectively shall, in their discretion, deem expedient, or to such regulations as the Supreme Court of the United States shall think proper, from time to time, by *rule*, to furnish to any *circuit* or district court concerning the same." (*Ib.*, p. 793; see also Mayer *v.* Foulkrod, 4 Wash. C. C. R., 349; Campbell *v.* Claudius, Peters C. C. R., 484; Jones *v.* Van Zant, 4 McLean C. C. R., 606; Beers *v.* Hughler, 9 Peters U. S. R., 359, 372.) Now, it is not alleged or shown that the statute of the State of Pennsylvania, relied upon by the plaintiff in error, has been adopted by the court below, or the former practice changed by either of those authorities, and therefore, under the admission before referred to, it follows that the action in its present form cannot be maintained, and that the evidence was properly rejected.

II. The second question discussed relates to the jurisdiction of the court, under the provisions of the 11th section of the judiciary act of September 24, 1789. That section provides:

"That no district or circuit court shall have cognizance of any suit to recover the contents of any promissory note or

other *chose in action*, in favor of an ASSIGNEE, *unless a suit might have been prosecuted in such courts to recover the said contents, if no assignment had been made.*" (1 Brightly's Dig., U. S. Laws, pp. 127–128.)

Now, it appears by the declaration that the *lessors* and the *lessees* were *all citizens of Pennsylvania.* It is therefore clear, that if no assignment of the lease had been made to Bradley, Breedin & Co. could not have maintained this suit in the circuit court, either against Rhines & Carman jointly, or against Carman, the surviving partner, and consequently that the court had no jurisdiction.

1. But it is contended by the plaintiff in error, that the lease in this case is *not a mere chose in action*, and that Bradley is not a mere *assignee of the lease*, but is also an *assignee of the reversion*, by virtue of his purchase of the land on the 7th of April, 1864, as alleged in his brief, pp. 2, 6, 7.

Without entering into the discussion of the question whether this fact, if true, would make any difference, it is sufficient to say, in answer to this proposition, that *this alleged fact is not an element in the case, as made in the court below.* In the declaration, there is no allegation of the purchase, nor was there any offer by the plaintiff to prove the fact on the trial, so far as appears by the bill of exceptions. (*See* Printed Record, pp. 2–6; *Ib.*, 8–9.)

He declared simply as *assignee of the lease*, and therefore, under the admission contained in the brief of the plaintiff in error, (pp. 6–7,) he was a mere *assignee* of a *chose in action*, and consequently the court had no jurisdiction.

2. It is also contended, that the objection to the jurisdiction of the circuit court came too late; that it should have been made by a plea in abatement, or by a motion to dismiss for want of jurisdiction, and the case of De Sobry *v.* Nicholson, 3 Wall., U. S. R., p. 420, is cited as authority.

But that is a mistake. The facts showing the want of jurisdiction already fully appeared upon the record, and there was no denial of the fact that Bradley was a citizen of Kentucky. No plea in abatement therefore was needed to set up

the facts showing this want of jurisdiction, nor proofs to establish them.

The principle of the decided cases is, that when facts sufficient to confer jurisdiction, on the ground of citizenship, are alleged by the record, facts *de hors the record* to defeat that jurisdiction, must be set up by plea in abatement; and that after a plea of the general issue, it is too late, on the trial upon the merits, to allege and prove such facts, in order to defeat the jurisdiction.

This is what was attempted to be done in De Sobry *v.* Nicholson, 3 Wall., U. S. R., p. 421, and what it was there ruled could not be done. The language of the court in that case must be *limited* by the facts of the case.

The *rationale* of the doctrine of this court on that subject is expounded by Judge Daniel in Sheppard *v.* Graves, 14 How., U. S. R., pp. 509–511, one of the cases cited by the court in De Sobry *v.* Nicholson, and it fully sustains the principle asserted. (*See* also the cases cited in Curtis' Dig. of U. S. Sup. Court Rep., tit. Jurisdiction, p. 289, § 8; *Ib.*, p. 290, § 5².)

Accordingly we contend that, where the want of jurisdiction, as in this case, sufficiently appears by the facts appearing on the record, it cannot certainly be necessary to plead them over again in abatement, in order to enable the defendants to defeat the action, by any of the methods known to the law. They might have pleaded in abatement, have moved to dismiss for want of jurisdiction, have demurred to the declaration, or they might, as they did in this case, object to the admission of the evidence which formed the basis of the action. Pleading over could not cure any *defect of substance*, such as a *want of jurisdiction appearing plainly upon the face of the record.* (Stephen on Plead., Heard's ed., marg. p. 147, note y and z; *Ib.*, pp. 151–153.

Where there were so many *concurrent methods* of raising the question, the failure to use one of them, at the outset of the cause, could not preclude the use of others, in their proper places, in subsequent stages of the cause. The defendants had a right to elect their method of taking advantage of the objection.

III. But, besides these, there is a fatal objection, not made by the defendants on the trial, which justified the rejection of the evidence—one which is entirely independent of the question of *citizenship*. The action was at common law, *on an express contract* by the plaintiff, who was a mere *assignee* thereof. To entitle him to a recovery the suit should have been in the name of the assignor, for the use and benefit of Bradley, the assignee. But the suit was brought by him in his own name and in his own right, contrary to the common-law method of pleading. (1 Chitty's Plead., marg. p. 15, &c.) If the suit had been properly brought, that is, in the names of Breedin & Co., *citizens of Pennsylvania*, for the use of Bradley, a citizen of Kentucky, against the defendants, *citizens of Pennsylvania*, the want of jurisdiction on grounds of citizenship would have been *patent* and beyond question. The attempt to violate the common-law methods of pleading, in order, if possible, to confer jurisdiction on the ground of citizenship, cannot succeed here.

The writ of error is brought to review the *action* of the court below in *rejecting* the evidence offered, rather than to review the *reasons* given for it. If, therefore, for any one of these, or for any *other* good reasons, the court below was *right* in rejecting the evidence, its action must be approved by this court, although the *reasons* given by the court below for its action may have been *wrong*, either in whole or in part. (Silsby *v.* Foote, 14 How., U. S. R., pp. 221–222.

JOHN A. WILLS,
*Attorney for Defendants in Error.*

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 261. 74

HENRY M. BENNETT, PLAINTIFF IN ERROR,

vs.

ALEXANDER HUNTER.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA.

FILED SEPTEMBER 18, 1868.